

Applicants: FLORIAN KERN ET AL.  
U.S. Application No.: 09/600,564  
Combined Amendment and Election of Species

#### REMARKS

Applicants reserve the right to prosecute the subject matter of the non-elected claims in a divisional application, if such subject matter is not ultimately granted here.

Claims 1-16 are pending. Applicants have also amended the specification, the abstract, and the claims to include references to SEQ ID Nos. in response to the Examiner's comment found at the bottom of page 3 of the Office Action. Claims 11-16 have been amended to place the claims in better patent practice format. Support for the amendments to claims 11-13 is found in the specification at page 13, lines 5-25 and pages 15-16 under the heading "Methods". It is believed that no new matter has been added.

#### Substance of the Interview

Applicants thank the Examiner for her time on February 24, 2004. At the Interview, Applicants inquired about restriction and patenting involving variants of short peptides and two peptides derived from different parts of the same protein. The Examiner stated there was no easy solution to obtaining protection for variants, because it is difficult to predict the biological effects of any substitution. Due the potential number of variants, the Examiner noted that the amount of structural information to search increases exponentially with time, and the PTO resources are limited to that extent. The Examiner further pointed out that the PCT lack of unity rules are different from the restriction rules in U.S. National cases.

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The traversal of the election requirement

Regarding the traversal, the basis for the Examiner's restriction is under PCT Rule 13.1 for lack of Unity of Invention. The Examiner alleges that Species I and II do not form a single inventive concept within Rule 13.2.

According to PCT Administrative Rules (Annex B, Part I) "unity of invention exists only when there is a technical relationship among the claimed inventions involving one or more of the *same or corresponding* special technical features. The expression "special technical features" is defined in Rule 13.2 as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art.


In the instant case, the special technical feature shared by all the claims in Species I and II are the peptides and derivatives thereof, wherein the nucleotides encoding the peptide and derivatives thereof all share a common utility, for example, to induce the production of interferon- $\gamma$  or TNF- $\alpha$  in CD8<sup>+</sup> T cells. Because the claims all share this special technical feature, unity of invention exists, and restriction is improper. Accordingly, Applicants respectfully traverse the restriction between Species I to II, and request the withdrawal of the requirement.

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Early and favorable action is earnestly solicited.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Combined Amendment and Election of Species (19 pages total) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: March 22, 2004

By   
David D. Kim